

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Respondent,

v.

PAUL JEMERIGBE,

Movant.

No. 2:93-cr-0251 KJM AC P

FINDINGS AND RECOMMENDATIONS

Movant, a federal prisoner proceeding pro se, has filed a letter that challenges the “stacking” of counts for which he was convicted under 18 U.S.C. § 924(c), on the ground that his counsel was ineffective. ECF No. 357. Movant asserts that he has completed the sentence that should have been imposed in his case, and asks the court to review this matter. Id. Petitioner’s letter is construed as a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255.

This matter has been referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302(c). ECF No. 358.

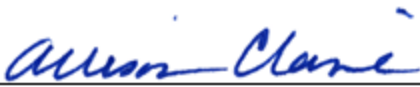
The court’s records demonstrate that movant previously filed a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. That motion was filed on June 16, 2016 (ECF No. 340), and was denied on the merits on September 26, 2019 (ECF No. 352; see also ECF No. 350).

1 Before movant can proceed with the instant challenge, he must obtain from the United
2 States Court of Appeals for the Ninth Circuit an order authorizing the district court to consider
3 this matter. “A second or successive motion must be certified as provided in section 2244 by a
4 panel of the appropriate court of appeals.” 28 U.S.C. § 2255; see also 28 U.S.C. § 2244(b)(3).
5 Therefore, the instant motion should be dismissed without prejudice to the filing of a formal
6 Section 2255 motion should movant obtain such authorization from the Court of Appeals.

7 Accordingly, IT IS HEREBY RECOMMENDED that movant’s August 4, 2020 letter,
8 construed herein as a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. §
9 2255, ECF No. 357, be DENIED.

10 These findings and recommendations are submitted to the United States District Judge
11 assigned to this case pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one (21)
12 days after being served with these findings and recommendations, movant may file written
13 objections with the court. The document should be captioned “Objections to Magistrate Judge’s
14 Findings and Recommendations.” Movant is advised that failure to file objections within the
15 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951
16 F.2d 1153 (9th Cir. 1991).

17 DATED: October 14, 2020

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19 ALLISON CLAIRE
20 UNITED STATES MAGISTRATE JUDGE
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